

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY
WRIT PETITION No. 7587 OF 2007

BETWEEN:

The Government of Andhra Pradesh,
Represented by its Special Chief Secretary,
to Government, Home (SC.B) Department,
Secretariat, Hyderabad and another

.....**Petitioners**

And

M. Rajaiah

.....**Respondent**

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:: O R D E R ::

Counsel for the petitioner : Government Pleader for
Services - I

Counsel for the respondent : Shri C. Srinivasa Baba

24th April, 2007

Per G.S. SINGHVI, CJ

This petition by Government of Andhra Pradesh and another is directed against order dated 27.11.2006 vide which the Andhra Pradesh Administrative Tribunal (for short, the Tribunal) quashed the

suspension of the respondent.

The respondent joined service in the year 1985 as Station Fire Officer. Subsequently, he was promoted as Assistant Divisional Fire Officer and then as Divisional Fire Officer (re-designated as 'District Fire Officer'), a post which he is holding since February 2000. In June 2005, the respondent was transferred from Anantapur to Hyderabad on the ground that the Anti-Corruption Bureau is contemplating to conduct an investigation on the allegations of corruption and misappropriation of public funds by him. On receipt of the report of the Anti-Corruption Bureau, the State Government issued G.O.Rt.No.1194, Home (SC.B) Department, dated 29.06.2006 whereby the respondent was placed under suspension.

The respondent challenged his suspension in O.A.No.3923 of 2006. One of the grounds taken by the respondent was that the power to suspend a member of service vests in the appointing authority and being the Appellate Authority, the State Government could not have exercised power under Rule 8 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, the Rules').

The learned Judicial Member of the Tribunal referred to the judgments of the Supreme Court in **Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank**^[1] and **A. Sudhakar v. Post Master General, Hyderabad**^[2] and quashed the suspension of the respondent on the premise that the State Government did not have the power to suspend him.

We have heard learned counsel for the parties and perused the record. Rules 8(1), 15, 32, 33(1) and 34(1) of the 1991 Rules, which have bearing on the decision of this petition read as under:

- “ **8. Suspension:** (1) A member of a Service may be placed under suspension from service –
- (a) where a disciplinary proceeding against him is contemplated or is pending, or

- (b) where in the opinion of the authority competent to place the Government Servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State, or
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

15. Power of appointing authority etc. to suspend members of State and Subordinate Services:-

Notwithstanding anything in these rules, the appointing authority or any authority to which it is subordinate including Government may also place under suspension under Rule 8, any member of a Service to whom these rules apply.

32. Orders against which no appeal lies:

Notwithstanding anything contained in this part, no appeal shall lie against –

- (i) any order made by the Governor;
- (ii) any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;
- (iii) any order passed by an inquiring authority in the course of an inquiry under Rule 20.

33. Orders against which appeal lies: - (1) Subject to the provisions of Rule 32 a Government servant may prefer an appeal, as hereinafter provided against all or any of the following orders, namely:

- (i) an order of suspension made or deemed to have been made under Rule 8;
- (ii) an order imposing any of the penalties specified in Rule 9 or Rule 10 whether made by the disciplinary authority or by an appellate or revising authority;
- (iii) an order enhancing any penalty imposed under Rule 9 or Rule 10;
- (iv) an order discharging him in accordance with the terms of his contract, if he has been engaged on a contract for a fixed or for an indefinite period and has rendered under either from of contract, continuous service for a period exceeding five years at the time when his services are so discharged; and
- (v) an order reducing or withholding the maximum pension, including an additional pension, admissible to

him under the rules governing pension.

34. Appellate Authorities: (1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in Rule 33 to the authorities as follows:

- (i) An appeal from an order passed by the High Court shall lie to the Governor.
- (ii) An appeal from an order imposing on a member of a State any of the penalties specified in Rule 9 or placing such member under suspension under Rule 8 passed by the Head of the Department shall lie to the Government and an appeal from an order passed by a lower authority shall lie to the Head of the Department.

Provided that an appeal from an order imposing the penalties specified in clauses (i) to (iv) of Rule 9 on all types of Inspectors of Police by the Superintendent of Police or an officer of the corresponding rank shall lie to the Special Inspector-General of Police (Law and Order).

(iii) An appeal from an order imposing on a member of a Subordinate Service any of the penalties specified in Rule 9 or Rule 10 or placing such member under suspension under Rule 8 passed by any authority lower than the Government shall lie to the next higher authority to whom the former authority is administratively subordinate:

Provided that in respect of the members of Subordinate Services working in the Habitual Offenders Settlements in the Police Department, the appellate authority shall be the Superintendent of Police concerned in respect of orders passed by the Manager of the Settlement;

Provided further that in the case of a member of the Andhra Pradesh Police Subordinate Service or the Andhra Pradesh Special Armed Police Service, the appellate authority shall be as specified against each of the categories in Appendix IV;

Provided also that in the case of a member of the Andhra Pradesh Police Subordinate Service or the Andhra Pradesh Special Armed Police Service, an officer superior to the competent authority may, for reasons to be recorded in writing, transfer an appeal from the competent authority to any other authority holding the same rank for disposal.

(iv) an appeal against an order referred to in sub-rule (2) of Rule 33 shall lie to the government.”

An analysis of the above reproduced rules shows that a member of a service can be placed under suspension in either of the three eventualities specified in Clauses (a), (b) and (c) of Rule 8(1). In terms of Rule 15, which begins with non-obstante clause, not only the appointing authority or an authority higher than the appointing authority, but also the Government can suspend any member of a service, who is governed by the 1991 Rules. This means that the power to place a member of service under suspension vests not only in the appointing authority, but also on any authority higher than the appointing authority including the Government. Any doubt regarding the State Government's competence to place a member of service under suspension is dispelled by the use of non-obstante clause in Rule 15, which gives overriding effect to that rule vis-à-vis other rules. An employee aggrieved by an order of suspension passed by the appointing authority or an authority higher than the appointing authority can file an appeal under Rule 33 and such appeal is required to be decided by the authority specified in Rule 34 (1). However, no appeal lies against an order of suspension passed by the State Government in exercise of its power under Rule 8 read with Rule 15.

In the application filed by him, the respondent did not challenge the vires of Rule 15 and, therefore, the Tribunal did not have the occasion to consider the same and for the same reason, we do not consider it necessary to make any adjudication on that question.

In view of the above discussion, we hold that the State Government has the power to suspend an officer like the respondent and the Tribunal committed a serious error by nullifying the order of punishment on the premise that the same has the effect of depriving the applicant (the respondent herein) of his right to file appeal. It appears to us that attention of the learned Judicial Member of the

Tribunal was not drawn to Rule 15, else he could not have ruled that the State Government does not have the power to suspend a member of service.

The judgments of the Supreme Court in **Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank** (supra) and **A. Sudhakar v. Post Master General, Hyderabad** (supra) are clearly distinguishable. In both the cases, the Supreme Court considered the question whether the authority higher than the punishing authority can inflict penalty on the delinquent employee and answered the same in affirmative by observing that if the Appellate Authority is to impose penalty, the delinquent will be deprived of his right to statutory appeal. In neither of the cases, the Supreme Court interpreted provision like Rule 15, which, as mentioned above, begins with non-obstante clause and empowers the State Government to place any member of the service under suspension by invoking Rule 8 of the Rules.

In the result, the writ petition is allowed. Order dated 27.11.2006 passed by the Tribunal is set aside and O.A.No.3923 of 2006 is remanded to the Tribunal for adjudication of other grounds of challenge taken by the respondent.

As a sequel to disposal of the writ petition, W.P.M.P.No.9733 of 2007 filed by the petitioners for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

24th April, 2007

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[\[1\]](#) (1995) 2 SCC 474

[\[2\]](#) 2006(3) Supreme 225